



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Americover Company--Reconsideration

File: B-234352.2

Date: April 27, 1989

DIGEST

Prior decision dismissing protest of fifth lowest bidder because it did not challenge the eligibility for award of one of the interviewing bidders and was therefore not an interested party to pursue the protest is affirmed where protester does not show that original decision was based on an error of fact or law.

DECISION

Americover Company requests reconsideration of our decision Americover Co., B-234352, Mar. 28, 1989, 89-1 CPD ¶ ___, dismissing its protest against the award of a contract under invitation for bids (IFB) No. R5-05-89-022 issued by the Forest Service, Department of Agriculture, for groundcover mats and wire anchor pins to control vegetation around newly planted trees in Klamath National Forest, California. We affirm the decision.

The IFB provided that the groundcover mats had to meet certain minimum requirements regarding weight and tensile strength. The protester, the fifth lowest bidder, included with its bid a letter suggesting that the agency review its minimum needs. According to the protester, Exxon Petroleum Company's #31-211 groundcover material, which had been used satisfactorily under prior solicitations, would not meet the requirements of this IFB because the solicitation contained the notation "these are minimum specifications." The protester said that the Exxon product met the weight and tensile strength requirements on average but did not meet them in all instances and could therefore not comply with them as "minimum" requirements. In this regard, the protester's letter stated "Americover hereby protests the wording as ambiguous and over specified." We dismissed this portion of the protest as untimely to the extent the protester was alleging a solicitation impropriety since a protest filed

with a bid is not considered filed before opening as required by our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1988).

Americover also asserted that the awardee's bid was nonresponsive since it would be supplying Exxon's #31-211 groundcover material which the protester maintained did not meet the minimum specifications. We dismissed this argument because we found that Americover was not an interested party to raise this issue.

In its protest, Americover asserted that the bids of the awardee (who was the second lowest bidder--the low bid was rejected as nonresponsive) and the third lowest bidder were nonresponsive since both were Exxon distributors and would presumably supply the Exxon #31-211 material. Americover did not refer at all to the fourth lowest bidder, which would have been in line for award if the bids of the awardee and the third lowest bidder were found nonresponsive. Since Americover was not next in line for award, we held that it was not an interested party within the meaning of our Regulations, which require that the protester be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of the contract. 4 C.F.R. §§ 21.0(a), 21.1(a).

In its request for reconsideration, Americover disagrees with our determination that it is not an interested party to pursue this protest. The protester believes that because it is a responsive bidder and because, upon examination, the bid submitted by the fourth lowest bidder may be found nonresponsive as well, it has the requisite economic interest to be viewed as an interested party.

We have consistently held that a party lacks the requisite direct economic interest where it would not be in line for award even if its protest were sustained. See Brunswick Corp., et al., B-225784.2 et al., July 22, 1987, 87-2 CPD ¶ 74; Eason & Smith Enterprises, Inc.--Request for Reconsideration, B-222279.2, Apr. 18, 1986, 86-1 CPD ¶ 386. In its initial protest, Americover never challenged the responsiveness of the fourth lowest bid and there was no evidence in the record before us that the fourth lowest bidder would not be eligible for award. We consequently have no reason to believe that that bidder would not receive award if the awardee and the third lowest bidder were found to have submitted nonresponsive bids.

Moreover, Americover's suggestion that the fourth lowest bid might be nonresponsive without any specific indication as to why that bid would be nonresponsive, is not sufficient.

to establish it as an interested party within the meaning of our Regulations. See Keal Cases, Inc., B-233370, Jan. 12, 1989, 89-1 CPD ¶ 34; Professional Medical Products, B-231743, July 1, 1988, 88-2 CPD ¶ 2. The protester has the responsibility to ascertain any possible basis for protest and to timely protest on that basis in sufficient detail so as to provide this Office and the agency with a reasonable understanding of why award of a contract to one or more offerors allegedly would be improper. In the absence of such information in a protest, we have no basis to assume that an award would not be proper. Accordingly, while Americover asserts that its economic interest in the award was indicated by the fact that it believed some bids to be nonresponsive and by the possibility that another bid also could be nonresponsive, that possibility is simply too tenuous to establish Americover as the firm in line for award if its protest were sustained. See Keal Cases, Inc., B-233370, supra.

Our decision is affirmed.


James F. Hinchman
General Counsel